SENATE LOCAL GOVERNMENT
EXHIBIT NO. 2
DATE 1-16-13
BILL NO. SB 40

MONTANA ASSOCIATION OF PLANN
Legislative Committee
2013 Legislative Session

Summary comments regarding: SB 40, AN ACT GENERALLY REVISING PROVISIONS GOVERNING SUBDIVISION REVIEW; REVISING PROCEDURES FOR THE SUBMISSION OF SUBDIVISION APPLICATIONS; PROVIDING THAT INFORMATION PERTAINING TO MITIGATION BY THE SUBDIVIDER MAY NOT BE CONSIDERED NEW INFORMATION; AMENDING SECTIONS 76-3-604 AND 76-3-615, MCA

Senate Local Government Committee; January 16, 2013

This proposed amendment would require the subdivider to request and participate in a meeting to submit the application for a subdivision. Under existing law, the subdivider has a "pre-application" meeting, but after that no additional meeting is needed to submit the application. The proposed act adds an apparent unnecessary step that will add time for both the subdivider and local government. The proposed amendment does not provide any information as to the purpose of a meeting to submit the application.

Planners and developers alike are accustomed to the current system of a pre-application meeting, submission of an application, and review for required elements and sufficiency of information. The element and sufficiency reviews were added to the Subdivision and Platting Act in 2005 IN ORDER to bring some predictability and accountability to the submittal process. The state model subdivision code reflects this process. Developers and reviewing agencies alike use the process successfully. It is predictable and effective statewide.

In addition, the proposed amendment would not allow information pertaining to mitigation of adverse impacts to be considered new information for purposes of a subsequent public hearing and full public disclosure and opportunity for comment. We are concerned that this is not in keeping with our state's commitment to open and public processes.

Current law provides a predictable review process and requires a meeting prior to submitting the application. We are unaware of any planning offices that wouldn't be willing to schedule an additional meeting if one was requested by the subdivider. The proposed amendment for 76-3-615, MCA would affect the subsequent public hearing process and possibly result in decisions that do not take into account important, but unintended side effects. Our conclusion is that the current law is operating well and this is NOT an issue that needs to be addressed through new legislation.

Background on Reviewing Subdivisions:

- **Pre-Application Meeting.** This is required by state law (76-3-504(1)(q), MCA and is for the purpose of explaining the subdivision review process and relevant state laws and local regulations that apply to that review and which might affect the design of the subdivision.

- **Application Submitted.** Current law does not specify how the subdivision application is submitted or received, but it does set some review parameters and time frames for Element Review and Sufficiency Review (below). These were established by the legislature to set some consistent timeframes state-wide.

- **Element Review.** Within 5 days of receiving the subdivision, the reviewing agent (typically the planning office or subdivision administrator) is required to determine if the application contains all the required elements of an application and to notify the subdivider of their findings.

- **Sufficiency Review.** Once the application is determined to contain all the required elements, it moves to the next phase of review – to determine if there is sufficient information for decision-making. Another deadline of 15 working days is set forth in state law for this review.

- **Application Determined Sufficient for Governing Body Review.** Once the application is determined sufficient, all major subdivisions move forward to the planning board.

- **Review by Planning Board and Public Hearing.** The planning board typically holds a public hearing on a major subdivision, then considers public comment and other information prior to making a recommendation to the governing body.

- **Governing Body Review.** The governing body is required by state law (76-3-608(5), MCA) to consult with the subdivider regarding their preferences for mitigation, if any, for the subdivision. There is no deadline in state law for when a subdivider can submit such preferences; consequently they have the option of presenting new mitigation measures right up until the time the governing body is ready to make their decision.

- **Need to Consider New Information and Subsequent Public Hearing**
  In order to ensure that there is adequate public review, 76-3-615, MCA requires the governing body to determine the need for a subsequent public hearing if new information is presented that is credible and relevant. This information might come from any source, not just from the subdivider and not just related to mitigation. However, it is possible that new mitigation measures could also be considered new and relevant information and

trigger the subsequent public hearing. For example, a subdivider could propose a new or alternative approach to the subdivision that might have unintended consequences and affect adjoining neighbors in new ways.

In fact, the need for a subsequent public hearing is generally infrequent. For example, in Yellowstone County there have been discussions at the Planning Board and governing body level regarding the option of conducting a subsequent public hearing, but one has never been conducted since this change in the law was enacted. The Planning Board and governing bodies appear to be very aware of the potential impacts a second hearing might have on an application and so take implementation of the option very seriously.

- **Governing Body Decision**. After considering the application, planning board recommendation, subdivider's preferences, and other information, including public comment and comment from a subsequent public hearing, the governing body makes their decision.